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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/783,865	02/20/2004	Greg Pellegrino	200301878-2	7590

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HEWLETT-PACKARD COMPANY  
Intellectual Property Administration  
P.O. Box 272400  
Fort Collins, CO 80527-2400

EXAMINER
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CHU, GABRIEL L

ART UNIT	PAPER NUMBER
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2114

MAIL DATE	DELIVERY MODE
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07/11/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/783,865	<b>Applicant(s)</b> PELLEGRINO ET AL.	
	<b>Examiner</b> Gabriel L. Chu	<b>Art Unit</b> 2114	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 April 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 21-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21-41 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. **Claims 21-24, 35-37 rejected under 35 U.S.C. 102(b) as being anticipated by US 5513314 to Kandasamy et al.** See previous rejection.

### ***Claim Rejections - 35 USC § 103***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. **Claim 25 rejected under 35 U.S.C. 103(a) as being unpatentable over US 5513314 to Kandasamy et al. as applied to claim 24 above, and further in view of Official Notice.** See previous rejection.
5. **Claim 26-30 rejected under 35 U.S.C. 103(a) as being unpatentable over US 5513314 to Kandasamy et al. in view of US 6751190 to Swallow.** See previous rejection.
6. **Claims 31-33, 38-40 rejected under 35 U.S.C. 103(a) as being unpatentable over US 6751190 to Swallow in view of US 5513314 to Kandasamy et al.** See previous rejection.
7. **Claim 34, 41 rejected under 35 U.S.C. 103(a) as being unpatentable over US 6751190 to Swallow and US 5513314 to Kandasamy et al. as applied to claim 31, 38 above, and further in view of Official Notice.** See previous rejection.

### ***Response to Arguments***

8. Applicant's arguments filed 22 April 2008 have been fully considered but they are not persuasive.

9. Applicant argues (page 12) that Kandasamy does not disclose a communication path is not available but where an acknowledgement datagram is not received thereby disclosing a different "failure mode". Examiner points out that Applicant merely discloses that a "communication path" is "not available", and no more. The failure, in Kandasamy, to receive such an acknowledgement datagram is an indication of unsuccessful transmission along the path.

10. Applicant argues (page 13) that Kandasamy does not disclose a write request that is transmitted from a first source to a second source and then to a first storage. Applicant goes on to point out that each of Kandasamy's workstations has their own disk and not a "failure mode" where a "first server" is unable to communicate with its file system or a "second server" is unable to communicate with its file system. Examiner herein notes that servers and file systems, although used to describe Kandasamy, is not language used in the claims. For example, Applicant instead uses the broad terms "source" and "storage node". In Kandasamy, a client is a source of write requests, and a server may be a source or a target. The ultimate medium on which a write is executed may very well be a disk, in Kandasamy, but it is still executed on a storage server, which is clearly a broad "storage node". Further, in Kandasamy, as cited, since a first storage server may force a write to a second, it is also a "source".

11. Applicant argues (page 14) that Kandasamy may initiate a conventional write operation "directly" to a secondary server from a primary server, which is not directly to

the secondary server's media, and further, that it is allegedly claimed that "the first source write[s] on the first storage node using the second source to do the writing, since there is no communication between the first source and the first storage node." Firstly, this alleged claiming makes a lot of assumptions about what is being read into the claims, which Examiner must read broadly and reasonably. Secondly, Applicant is pointed to the above where Applicant's "source" and "storage node" language, in addition to Applicant's defining of connection, is not sufficiently descriptive.

**12.** Applicant argues (page 15) that Examiner acknowledges that Kandasamy does not specifically disclose a limitation in claim 26 that Applicant feels is the same limitation as was disclosed in claim 21. Applicant should go back and compare claims 21 and 26 and note that claim 26 has many additional limitations that were not present in claim 21. Accordingly, Applicant may have noted (however, apparently not) that Kandasamy was not applied in the same way to claim 26 as it was to claim 21. This should have indicated to Applicant that a different interpretation was being applied using the same art. Particularly, Applicant should note the inclusion of a "second storage node" in claim 26 that is not in claim 21. Applicant should go back and re-read this rejection in view of paragraph 10, 11 above. As such, the superficially same limitation is not actually the same limitation. This should have been evident as there were more words in a different context. The same effect can be noted in superficially similar dependent claims placed in different claim hierarchies or different claim sets. Applicant will remember, for example, that dependent claims incorporate all the limitations of their parent claims.

Similarly, even though the particular limitation of claim 26 has a lot of words in common (even then, notably not all), it must be read in the context of the whole claim.

13. Applicant argues (page 17) that the “routing” of packets as taught by Swallow is distinguished from the “execution of commands (i.e., a write request)” recited by the claims. Be that as it may, the packets being routed by Swallow in view of Kandasamy are for writing.

14. Applicant argues (page 18) that Kandasamy fails to teach a secondary file server which writes on a different file server's disk (i.e., a first source node directing a second source node to write on a target (i.e., third) storage node. Here again, Applicant is directed to Applicant's broad “source” and “storage node” language. See paragraph 10, 11 above.

### ***Conclusion***

15. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gabriel L. Chu whose telephone number is (571) 272-3656. The examiner can normally be reached on weekdays between 8:30 AM and 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Scott Baderman can be reached on (571) 272-3644. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gabriel L. Chu/  
Primary Examiner  
Art Unit 2114

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